

# coalition for women prisoners

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## Domestic Violence Merit Time Bill

*Sponsored by Assemblymember Helene Weinstein  
Chair of the Judiciary Committee*

The question everyone asks is ‘why didn’t you leave?’ Answering this has been part of my therapy for 11 of my 14 years in prison. Some answers I have come to are fear, desperation, addiction, rejection, and sickness. I felt he would change. I felt I could change him. Since my incarceration I’ve done nothing but strive to rehabilitate myself...I have taken responsibility for my actions and am now a changed person.

The **Domestic Violence (DV) Merit Time Bill (A.4516)** extends merit time eligibility to incarcerated DV survivors who can prove: (1) that they were subjected to substantial physical, sexual or psychological abuse; (2) that the abuse was inflicted by a member of their family or household; and, (3) that the abuse was a substantial factor in causing their offense. **A.4516** would:

### ➤ **Begin to Address Years of Injustice Suffered by DV Survivors**

- Survivors of domestic violence who defend themselves against their abusers or commit other offenses as a result of the abuse they suffered are frequently sent to prison for long periods of time with little chance to earn early release.
- Merit time allows the State Department of Correctional Services (DOCS) to grant early release to incarcerated people who maintain good behavior and complete certain activities, such as obtaining a GED or completing a drug treatment or vocational program. Currently, people convicted of violent offenses, including DV survivors, are not eligible for merit time.
- Establishing eligibility for survivors will provide much-deserved relief for incarcerated individuals who pose no threat to public safety, who are themselves crime victims, and whose lives have been devastated by domestic violence.

### ➤ **Save New York State Significant Funds Without Compromising Public Safety**

- Under the DV Merit Time bill, an estimated 72 women would be eligible for release 11 months before their earliest release date (ERD). In all future years, 101 women would be eligible 17 months before their ERD.<sup>i</sup> Based on these estimates, the bill would **save \$2,851,200 in FY 2010 and \$6,181,200 every year** after that.<sup>ii</sup>
- Merit time is a discretionary program: eligibility does not guarantee release. DOCS makes merit time decisions on a case-by-case basis.
- Officials making release decisions are required to take into consideration not only an inmate’s program history and behavior record, but also any recommendations from the sentencing court and/or the district attorney to the Division of Parole and any statement to Parole by the crime victim or from the victim’s representative.<sup>iii</sup>
- The DV Merit Time bill allows the Office for the Prevention of Domestic Violence, an executive-level agency, to train relevant DOCS personnel and to consult with DOCS in drafting regulations and assessing individual applications.
- Survivors sent to prison for crimes as a result of abuse have extremely low recidivism rates: of the 38 women convicted of murder and released between 1985 and 2003, not 1 returned to prison for a new crime within a 3 year period – a 0% recidivism rate.

## ➤ Help Address Insufficient Exceptions for DV Survivors in Current Law

- The two current exceptions for DV survivors in the criminal justice system have proven ineffective:
  - 1) Jenna’s Law Exception Penal Law §60.12 – Established in 1998, this exception permits judges to grant indeterminate sentences to survivors convicted of crimes against abusers. According to the New York State Sentencing Commission, only 1 person has been sentenced under this provision since 1998 – a man who has been denied parole twice.<sup>iv</sup>
  - 2) Work Release Exception Correction Law §851 – This exception allows incarcerated survivors to be eligible for temporary release programs, including work release. These programs were closed to people convicted of violent offenses in 1995. Since this law passed in 2002, only 25 women have applied and only 4 have been granted work release.
- Both of these exceptions apply only to survivors convicted of crimes against batterers. This narrow limitation disregards the complex role that abuse plays in a survivor’s behavior and actions and, in effect, penalizes survivors for not committing physical acts against their abusers.
- The DV Merit Time bill addresses this issue by including survivors serving time for other offenses if they can prove – using sufficient corroborative materials – that the abuse was a substantial factor in their crime.

## ➤ Remove Discriminatory Merit Time Program Criteria

- Current merit time regulations are overly restrictive. For example:
  - Getting a GED is the only academic achievement legally recognized as a way to earn merit time. This criterion unfairly discriminates against people who enter prison with lower – or higher – educational levels and non-English dominant individuals. Under the DV Merit Time bill, completion of in-prison educational programs other than GED would also qualify.
  - Completing a drug treatment program is merit time’s only rehabilitative criterion. This criterion unfairly excludes incarcerated people with no history of addiction. The DV Merit Time bill would allow other comparable rehabilitative programs, such as domestic violence programs, to qualify. The bill would also bring the work release statute in line with these revised definitions.
- Amendments to merit time criteria contained in the bill reflect feedback from the DOCS Commissioner and former high-level DOCS program officials.

Incarcerated survivors have been punished twice – first when society failed to protect them and then again when they were sent to prison. The DV Merit Time bill (**A.4516**) is a necessary step toward reversing this course by allowing survivors whose lives have been shattered – first by violence and then by incarceration – to more quickly begin the important journey of returning to their communities and children, rebuilding their lives, and recovering from abuse.

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<sup>i</sup> These estimates are based on data obtained from the New York State Department of Correctional Services Research Department.

<sup>ii</sup> Incarcerating an individual in a New York prison for 1 year costs \$44,000, or about \$3,600 per month. Legal Action Center, *Drug Law Reform 2008 – Dramatic Costs Savings for New York State*, at 6. The Legal Action Center reached this figure by dividing DOCS FY 2008 budget (\$2.7 billion) by the number of individuals in DOCS facilities (61,260). The financial statistics cited here were derived by applying the Legal Action Center’s figures to estimates from DOCS Research Department regarding the number of incarcerated women who would be eligible for early release under the DV Merit Time bill: \$2,851,200 = 72 women x 11 months x \$3,600/month; \$6,181,200 = 101 women x 17 months x \$3,600/month.

<sup>iii</sup> See New York State Department of Correctional Services Directive 4791, “Presumptive Release,” 12/20/2005. See N.Y. Correct. L. §806.

<sup>iv</sup> *Sentencing Commission Preliminary Report 2007*, Sentencing Commission, p. 18 (2007).